



FORECLOSURES: MUNICIPAL LEGAL AUTHORITY

Taking Action: Local Government Strategies to Mitigate the
Impact of Foreclosures on Communities

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The Statistics

- Each abandoned home costs the City of Chicago \$34,000 annually
- 15,000 new pre-foreclosure listings were filed in the first part of 2008 in Illinois - an 8% increase over 4th quarter 2007 and a 100% increase from 1st quarter 2006
- Illinois is among four states with the highest foreclosure activity last year – these four states accounted for 52% of total foreclosure filings

Impact of Foreclosures on Municipalities

- Direct (Financial) Costs:
 - Decrease in Revenues (taxes, fees, utility charges)
 - Demolition Costs
 - Building Inspections
 - Legal Fees and Court Costs
 - Maintenance and Security
 - Social Services
- Indirect Costs:
 - Decrease in Property Values
 - Devaluation of Community Character and Aesthetics
 - Crime



General Municipal Authority – The Police Power

- ❑ Municipalities have the authority to enact laws in furtherance of the public health, safety, morals, and general welfare. *County of Cook v. Priester*, 62 Ill.2d 357, 1976.
- ❑ Applies to home rule and non-home rule municipalities
- ❑ Broadly construed by the courts

Property Maintenance Codes

- ❑ Municipalities have the authority to enact property maintenance codes to regulate:
 - Weeds, landscaping, and dead vegetation
 - Trash, junk, and debris
 - Building materials
 - Accumulation of newspapers, flyers, notices
 - Dilapidated and unsafe condition

Source: Illinois Municipal Code, 65 ILCS 5/11-1; 5/11-13; 5/11-20; 5/11-31

Vacant Building Ordinance

- ❑ Maintain vacant buildings and properties
- ❑ Prohibit window and door boarding and encourage other security measures
- ❑ Remove discarded personal items, furniture, and appliances
- ❑ Secure vacant buildings (closure of windows, doors, gates and fixing broken windows)
- ❑ Weekly municipal inspections of vacant buildings and properties
- ❑ No express statutory authority in Illinois – may be incorporated into property maintenance code



Vacant Property Registry

- ❑ Require registration of all abandoned and vacant property within municipality
- ❑ Registration Fee
- ❑ Post name and contact information of responsible party
- ❑ Monitor and enforce property maintenance
- ❑ No express statutory authority in Illinois – may be incorporated into property maintenance code

Administration Adjudication

- ❑ 65 ILCS 5/1-2.1-8 authorizes a home rule municipality to establish an administrative adjudication system for all code violations
- ❑ 65 ILCS 5/1-2.2-55 authorizes a non-home rule municipality to establish an administrative adjudication system for all code violations except building code and moving traffic violations
- ❑ Process is more streamlined than judicial adjudication of code violations

Demolition, Repair, Enclosure, or Remediation

- ❑ Municipalities have the authority to:
 - demolish, repair, enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the municipality
 - remove or cause the removal of garbage, debris, and other hazardous, noxious, or unhealthy substances or materials from those buildings

Source: Illinois Municipal Code, 65 ILCS 5/11-31-1



Demolition Process

- Notice to Owner and Lienholders
- Filing of Complaint in Circuit Court
- Court Order of Demolition
- Recovery of costs incurred in demolition, repair, enclosure, or removal, including court costs and attorneys' fees

Municipal Liens

- Water/Sewer Liens (65 ILCS 5/11-139-8): municipality may file lien against property for unpaid water and sewer fees.
- "Weed" Liens (65 ILCS 5/11-20-7): municipality may cut weeds or grass or trim/remove trees and bushes on neglected or abandoned property and file lien against property to collect municipal costs.
- Garbage Liens (65 ILCS 5/11-20-13): municipality may remove garbage and debris from property and file a lien against property to collect municipal costs.
- Tax Liens (65 ILCS 5/8-13-15): municipality may file lien against property for unpaid municipal taxes.

Priority of Municipal Liens in Foreclosure Action

- Municipal liens are typically junior lienholders in foreclosure suits (*exception* for demolition liens)
- Municipality is defendant in foreclosure action; appearance costs can range from \$0 to \$387.50
- Municipality only recovers if funds remain after lender is paid in full; otherwise, municipal lien is extinguished once the property is sold at foreclosure sale and remaining deficiency judgment is worth little
- If possible, negotiate settlement with lender



Landbanking

- ❑ Municipal purchase of vacant and abandoned properties
- ❑ Funding sources – bonds, taxes, loans, general revenues
- ❑ No express statutory authority for landbanking in Illinois

Municipal Acquisition of Property

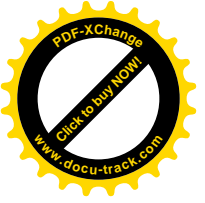
- ❑ Municipalities have the authority to:
 - acquire by purchase or condemnation buildings that do not conform to zoning standards; acquire all land necessary or appropriate for the rehabilitation or redevelopment of any area blighted by substandard buildings; remove or demolish substandard buildings acquired by the municipality; hold and use any remaining property for public purposes; and sell, lease, or exchange property that is not required for public purposes.
 - purchase or lease property for public purpose, subject to certain statutory procedures

Source: Illinois Municipal Code, 65 ILCS 5/11-2-2; 11-13-7; 11-61-3; 11-76.1-1;

Eminent Domain

- ❑ Municipalities have the authority to condemn private property for public use
- ❑ Recent amendments to the Eminent Domain Act have made it more difficult (and more expensive) to condemn property for sale to a private party

Source: Illinois Compiled Statutes, 65 ILCS 6/11-61-1; 735 ILCS 30/1-1-1



Financing for Landbanking

- ❑ No specific legislative funding sources or authority
- ❑ Taxes
- ❑ Bonds
- ❑ Mortgages (if home rule)
- ❑ Installment Purchase Agreements

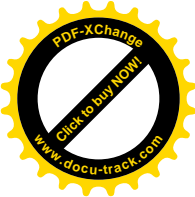
Tax Increment Financing District

- ❑ Municipalities have the authority to:
 - establish a tax increment financing district (TIF) over blighted or underdeveloped areas, including areas with dilapidated and deteriorated buildings or structures or buildings that do not meet minimum code requirements
 - allows a municipality to issue bonds for financing infrastructure and other area improvements and to purchase and condemn property within the TIF district

Source: Illinois Municipal Code, 65 ILCS 5/11-74.4-1 et seq.

Prevention Activities

- ❑ Financial Assistance
 - Offer grants or lost-cost loans to homeowners to help them stay in homes
 - Utility fee and tax forgiveness or forbearance programs
 - No express statutory authority
- ❑ Social Services
 - Conduct free foreclosure workshops and forums to provide information and counseling to homeowners
 - Partner with social service and housing agencies



What Other States are Doing

- ❑ Task Forces. Colorado, Connecticut, Maryland, Massachusetts and Ohio formed task forces comprised of state attorneys general, state banking regulators, mortgage industry representatives, and consumer groups.
- ❑ Foreclosure Study. A 2007 Delaware law allows the state banking commissioner to retain a portion of the bank franchise tax to fund a study of foreclosures and consumer protection.
- ❑ Foreclosure Hotlines. Colorado, Connecticut, Iowa, Massachusetts, and New Mexico have created foreclosure hotlines, that have proved to be popular with homeowners.
- ❑ Emergency Loan Funds. Some states provide special, low-cost loans to help consumers who are in danger of losing their homes. Many of these programs are administered by state housing finance agencies.

Source: National Conference of State Legislatures

What Other States are Doing

- ❑ Emergency Mortgage Assistance Programs. At least five states introduced bills in 2007 related to emergency mortgage assistance programs.
- ❑ Changing the Foreclosure Process. Some states are considering modifying the foreclosure process to change the statute of limitations for foreclosure actions, provide right to public counsel, and impose more generous notice requirements.
- ❑ Regulating Foreclosure Consultants. States are regulating foreclosure consultants to prevent unscrupulous actors from taking advantage of desperate homeowners; state legislators have put in place protections that allow consumers to rescind contracts and provide for fines for violators. In all, 12 states—California, Colorado, Georgia, Illinois, Indiana, Maryland, Minnesota, Missouri, Nevada, New Hampshire, New York and Rhode Island—regulate foreclosure transactions.

Source: National Conference of State Legislatures

Illinois Municipalities Need...

- ❑ Legislation – Municipal Authority
 - Streamline process for acquiring and selling vacant properties (landbanking)
 - Additional revenue sources (taxes, fees, loans)
 - Vacant property registry
 - Lender disclosure and enforcement authority
- ❑ Regional Action
 - County-wide or regional programs
- ❑ Funding for Municipalities to Mitigate Impact of Foreclosures (Federal & State)
